IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.1877 OF 2006

Brihanmumbai Municipal Corporation,
through the General Manager, BEST Undertaking. ...Petitioner.

Versus

Mr.Ashokkumar Hingu Singh. ...Respondent.

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Mr. N.M. Palshikar i/b. Crawford Bayley &Co. for the Petitioner.
Mr.A. S. Karwande for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

July 24, 2006.

ORAL JUDGMENT :

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Respondent was employed as a bus driver with the BEST Undertaking, on 20th December 1997. On 17th September

2000, the Respondent was on duty on Bus 5435 and was plying on Route 214. The bus was proceeding from Bandra (West) to Hill Road at 0115 hours, that is to say, an hour and fifteen minutes after mid night. The bus which was being driven by the Respondent met with an accident near Holy Family Hospital on Ramdas Nayak Marg, during the course of which, there was a collision with a motor cycle bearing Registration No. MH-01-W-7224. Injuries were sustained by the motor cyclist and by the pillion rider. The motor cyclist succumbed to his injuries, at KEM Hospital where he was admitted. The motor cyclist who died in the accident was an employee of BEST Undertaking and was working as a Cleaner at the Colaba Depot. A criminal case for an offence punishable under Sections 279, 338, and 304(A) of the Penal Code was registered against the Respondent on 17th September 2000 vide CR No. 353 of 2000. A report of the accident was submitted by Vishwas Kalyankar and G.R. Ghule who were Accident Inspectors. On 19th January 2000, a chargesheet was issued to the Respondent under Standing Order 20(j) on the allegation that while performing his duties as a bus driver, he was guilty of gross negligence which resulted in an accident in which one

person died. A disciplinary enquiry was conducted against the Respondent by the Senior Traffic Officer, attached to the Poisar Depot. The Respondent was represented by a Union representative at the enquiry. The Respondent participated in the enquiry and availed of the opportunity of defending himself. The Trying Officer, by his report dated 5th January 2001, came to the conclusion, after considering the evidence on the record that the charge levelled against the Respondent was proved. Having considered the past record, the Trying Officer came to the conclusion that the Respondent was not a fit person to be retained in the service of the Undertaking. The Respondent was accordingly dismissed from service. The Respondent filed two departmental appeals which were rejected.

3. Thereupon, the Respondent filed an application under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 before the Labour Court. The Undertaking filed its Written Statement. The Labour Court by its judgment and order dated 25th March 2003 held that the enquiry was fair and proper and that the findings of the Enquiry Officer were not perverse. However, the

Labour Court interfered with the punishment that was imposed upon the Petitioner on the sole ground that the service record of the Respondent shows that he while was censured in the past for misconduct arising out of "**liquor drinking habit etc**.," he had not been punished in the past for an act of gross negligence. The Labour Court held that this was a first charge of gross negligence and the punishment of dismissal from service would amount to an 'economic death' and was hence harsh and shockingly disproportionate. An order of reinstatement was passed without back wages.

4. The order of the Labour Court was carried in appeal both by the workman and by the management. The Industrial Court by its appellate order dated 24th April 2006 affirmed the findings of the Labour Court that the findings of the Enquiry Officer were not perverse. It may be noted at this stage that before the Labour Court, the workman had not disputed that the enquiry was fair and proper. However, the argument was in regard to the perversity of findings. The Industrial Court in appeal also came to the conclusion that the findings of the disciplinary enquiry were not perverse. The Industrial

Court noted the circumstances in which the accident has been caused and also took due note of the fact that at the time of impact, the driver's side portion of the bus was on the wrong side of the road. However, holding that this was the first fatal accident caused by the Respondent, the Industrial Court affirmed the order of the Labour Court. This order has been called into question on behalf of the Undertaking.

5. On behalf of the Petitioner it has been submitted that both the Courts have concurrently found that the enquiry was fair and that the charge of misconduct under Standing Order 20(j) was established. Counsel submitted that the Labour Court committed a patent error in setting aside the punishment of dismissal which cannot, in any manner, be regarded as shockingly disproportionate. On the other hand, Counsel appearing on behalf of the Respondent sought to sustain the order of the Labour Court by inter alia relying upon the grounds in the appeal that was preferred by the Respondent before the Industrial Court, particularly Grounds (c) to (f) of the Memo of Appeal. These submissions can now be considered.

6. The disciplinary enquiry has been held to be fair and proper. The Labour Court has noted the concession of Counsel for the Respondent that the fairness of the enquiry was not challenged. Both the Courts below have come to the conclusion that the finding of misconduct is not perverse. Counsel appearing on behalf of the Respondent has attempted to demonstrate that the grounds of appeal that were urged before the Industrial Court, particularly grounds (c) to (f) of the Memo of Appeal would show that the finding of misconduct cannot be sustained. On the assumption that this Court will be justified in looking at those grounds, particularly in a petition by the Undertaking, a brief reference to the grounds in the Memo of Appeal is necessary. In the Memo of Appeal filed by the Respondent in the Industrial Court, it was sought to be submitted that the motor cycle dashed on the bus which could be seen from the damage to both the vehicles. The bumper on the right side of the bus was bent and the right side signal light was broken. In the case of the motor cycle, the front wheel was bent and the right side mirror was broken. The contention of the Respondent was that if the bus had given a dash to

the motor cycle, then the bus would have crushed the said motor cycle and the motor cyclist. The motor cyclist, it was submitted, died because of impact of his head having hit the road, seven hours after the accident; whereas if the bus had dashed against the motor cyclist, death would have been instantaneous. Moreover, it was submitted that there were brake marks of the bus over a distance of 6 to 7 feet, but no brake marks of the motor cycle were found on the road which shows that the motor cyclist had not applied his brakes and could not control his vehicle. It was also urged that the Police panchanama shows that a space of 25 feet was available on the left side of the motor cycle and it was submitted that the motor cyclist could have swerved his vehicle to the left to avoid the accident.

7. In my view, all the relevant facts and circumstances of the case have been considered initially in the course of the disciplinary enquiry and subsequently by the Labour Court as well as by the Industrial Court on the question as to whether the findings of the enquiry are perverse. The report of the disciplinary proceedings contained the following findings:

-(i) At the point of time when the accident took place, both the motor cycle and the bus were in motion and there was a head-on collision;

-(ii) At the place of accident, the road was sufficiently wide with a width of approximately 70 feet;

-(iii) At the time of accident, there were no other vehicles on either side of the road, nor was any part of the road occupied by parked vehicles;

-(iv) The accident took place at 1.20 a.m. in the night at which time there was very little traffic;

-(v) Near the site of the accident, there was a Bus Stop for buses plying on Route 214. Despite this, the Respondent had not stopped the bus at the Bus Stop. The bus was driven at a high speed as a result of which the vehicle had crossed the centre line of the road

and was on the opposite side of the road. The driver had not stopped the bus at the Bus Stop;

-(vi) The point of collision was on the right side of the bus. The bumper on the right side and the head light were broken together with two signal lights. The mudguard of the motor cycle was bent, the tyre had burst and the motor cycle was substantially damaged;

-(vii) The bus driver had seen the motor cycle from a distance of nearly 60 feet which has been stated in the contemporaneous record, immediately after the accident;

-(viii) In his initial statement, the Respondent had stated that he had not stopped the bus at the bus stop since there were no passengers who were waiting to get into the bus or to alight. However, in the course of the disciplinary enquiry, the Respondent stated that he did not halt the bus at the Holy Family Bus Stop since he failed to notice the bus stop. The Enquiry Officer held that this was factually incorrect since the Bus Stop was sufficiently large with a

shelter and there was no question of the bus driver having failed to notice the Bus Stop;

-(ix) After the Respondent had applied the brakes, the bus travelled 6 to 7 feet and there were brake marks on the road. The bus was driven at a high speed;

-(x) Though at the time of the accident, a space of nearly 35 to 40 feet was available on the left side of the bus and though the Respondent had seen the motor cycle at a distance of 60 feet, the Respondent did not make any effort to bring his vehicle back to the correct lane. The injured pillion rider stated that the motor cyclist attempted to avoid the accident by swerving his vehicle to the left;

-(xi) The bus which was driven by the Respondent was certified to be in a roadworthy condition. There was no technical defect.

8. Both the Labour Court and the Industrial Court have considered the circumstances in which the accident took place. The

Labour Court specifically rejected the defence of contributory negligence on the part of the motor cyclist. The Labour Court was of the view that the findings were based on the evidence of domestic enquiry. The Labour Court also correctly found that in a departmental enquiry, it was not necessary to prove the charge of misconduct beyond reasonable doubt as in the case of a criminal trial. The Industrial Court in the course of the order in appeal also noted the nature of the impact; the fact that the road was free at the time when the accident took place and that the driver's side portion of the bus that was driven by the Respondent was on the wrong side of the road. In these circumstances, the findings of both the courts to the effect that there was no perversity in the findings of the Enquiry Officer is manifestly correct and does not warrant interference under Article 227 of the Constitution.

9. That brings me to the question as to whether the Labour Court was justified in interfering with the punishment of dismissal on the ground that it was harsh and disproportionate. The Labour Court interfered with the penalty that was imposed by the disciplinary

authority on the ground that while the past record of the Respondent shows that he had been censured for other misconducts such as of consuming liquor while on duty that this was the first misconduct of gross negligence. The Industrial Court held that this was the first case of a fatal accident in the service of the Respondent. I am of the view that the approach of both the Courts below suffers from a clear perversity and has to be interfered with in the exercise of the supervisory jurisdiction under Article 227 of the Constitution. The question as to whether the punishment that is imposed in the course of a disciplinary proceeding is shockingly disproportionate has to be judiciously considered having regard to the nature of the misconduct and the past record. In a given case, the misconduct that is proved may be so serious that the imposition of a penalty of dismissal is justified even though misconduct of that nature has been committed for the first time by the employee. Taking the facts of a case such as the present for consideration, the driver of the Undertaking may have been involved in a serious accident and once it is held that the accident has been caused by an act of gross negligence on his part, it would be manifestly inappropriate for the Labour Court to hold that

the penalty is disproportionate merely on the ground that it was for the first time that the employee was guilty of an act of gross negligence. The Industrial Court has held that this was the first fatal accident caused by the driver in question. The Undertaking, as a public employer, is not required to wait until one of its drivers commits several fatal accidents before it takes the decision to impose the penalty of dismissal. Transport undertakings, particularly those that are publicly owned, owe a duty to society to provide safe and efficient services. The Undertaking cannot be oblivious of the fact that it owes first and foremost a duty to the members of the public who utilise the services of the Undertaking's buses as well as of the roads which are provided by the local authority for their daily activities. The safety of the ordinary citizen is of paramount importance. Labour Courts cannot ignore the most important dimension in the operations of public undertakings – that of public welfare. Drivers running amuck in urban areas must be strictly dealt with – it would be a travesty of justice for the commuter to be told or, for the matter for the victim's family to learn, that notwithstanding an act of gross negligence of a bus driver which resulted in the death of a road user, society must still

suffer him at the back of another wheel in another bus. The Labour Court's view is that a past record of being addicted to liquor was not bad enough. A drunken driver is a grave hazard to public safety, something which no Court should condone. The wide powers which judicial institutions are vested with under Section 11A of the Industrial Disputes Act, 1947 are an aid to justice. That is not a jurisdiction to be exercised arbitrarily. All judicial discretion has to be judiciously wielded. Society should not be allowed to suffer the increasing incidents of death on the road caused by errant drivers. Judicial intervention in disciplinary matters in such cases is misplaced and must be exercised with restraint, caution and circumspection.

10. In these circumstances, the interference of this Court under Article 227 of the Constitution is warranted. The interference by the Courts below with the penalty of dismissal was clearly not warranted. The impugned order of the Industrial Court dated 24th April 2006 in so far as it dismissed the appeal filed by the Petitioner Undertaking (Appeal (IC) No.85 of 2003 in Application (BIR) No.37 of 2001) is quashed and set aside. Application (BIR) No.37 of 2001 shall stand dismissed. There shall be no order as to costs.

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